

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 14 February 2011**

**Public Authority:** The Governing Body of Sheffield Hallam University  
**Address:** City Campus  
Howard Street  
Sheffield  
S1 1WB

### **Summary**

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The complainant requested under the Freedom of Information Act 2000 (the 'Act') that he received the workplace email addresses of all of the public authority's staff. The public authority confirmed that it held the information, but believed that it was exempt. It applied section 36(2)(c) [disclosure would prejudice the effective conduct of public affairs], section 40(2) [third party personal data] and section 31(1)(a) [disclosure would be likely to prejudice the prevention of crime] to the information. The complainant requested an internal review and the public authority maintained its position. The complainant then referred this case to the Commissioner.

The Commissioner has carefully considered this case and has determined that he does not uphold the complaint. He finds that section 36(2)(c) was engaged and that in all the circumstances the public interest favoured the maintenance of the exemption over the disclosure of the information. He has therefore not considered the operation of either section 40(2) or section 31(1)(a). He did find a procedural breach of section 17(3), but requires no remedial steps to be taken.

### **The Commissioner's Role**

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

## Background

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2. The complainant owns a website that enables all Universities to receive requests for information simultaneously. He believes that the website should be able to investigate higher education matters through FOI requests and publishes the results.
3. This request has been made to every University in the UK and the complainant has told the public authority that he requires this information to inform the staff about his website. He explained that each member of staff was to be invited to suggest topics worthy of investigation in confidence.

## The Request

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4. On 26 April 2010 the complainant requested the following information from the public authority:

*'FOI Request – Staff E-mail Addresses*

*I would like to request the following information under the provisions of the Freedom of Information Act. I would ask you to send your response by e-mail.*

*A list of the workplace e-mail addresses for all staff.*

*By workplace I am referring to corporate e-mail addresses ending in .ac.uk.*

*By staff I am referring to all individuals employed by your institution.*

*Please note that I do not require any segmentation of the list or any associated details.'*

5. On 20 May 2010 the public authority issued its response. It confirmed that it held the relevant information that was embraced by the request. However, it believed that it was entitled to withhold the information on the following three grounds:

1. Section 36(2)(c)<sup>1</sup> – the public authority explained that it believed that the disclosure of the full list would be likely to prejudice the effective conduct of public affairs. It explained that the Information Tribunal (the 'Tribunal') had considered a similar case in EA/2006/0027 which asked for the contact directory of the Ministry of Defence.<sup>2</sup> It explained that its Vice Chancellor has considered the request, alongside the Commissioner's guidance and the Tribunal decision, and has concluded that in his opinion the exemption was engaged and that the public interest favoured the maintenance of the exemption. It explained that it relied on paragraphs 88 and 89 of the Tribunal verdict and believed it was entitled to rely on this exemption because it has chosen to provide sufficient external contacts to enable its system to be efficient and it did not believe that the public interest would be served through the disruption of its service through unwanted emails. It also explained that the disruption has been apparent from its receipt of spam attacks after the inadvertent previous disclosure of part of the directory;
  2. Section 40(2) – it explained that this information amounted to the personal data of its staff and that it believed it could refuse to provide the information on this basis; and
  3. Section 31(1)(a) – it explained that it believed that the disclosure of the information would be likely to prejudice the prevention or detection of crime, because it would enable someone to launch a denial of service attack against the University.
6. On 29 May 2010 the complainant wrote to the public authority to request an internal review. He challenged the application of each of the exemptions:
1. Section 36(2)(c) - He stated that very few other Universities had tried to apply this exemption. He explained that his reading of the Information Commissioner's guidance says that the purpose of section 36 is to provide public authorities with decision making space and that this case was distinct. In addition, he explained that he believed that EA/2006/0027 could be distinguished as 'there are a considerable number of unique factors which do not apply to Universities'. He also explained that while he was not an expert about denial of service attacks, he believed that the emails that are already on the Universities website would be sufficient;

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<sup>1</sup> All sections cited in this Decision Notice can be found in full in the Legal Annex that is attached to the end of it.

<sup>2</sup> This Information Tribunal decision can be found at the following link:  
<http://www.informationtribunal.gov.uk/DBFiles/Decision/i101/MoD.pdf>



2. Section 40(2) - He argued that University email addresses did not constitute personal data and explained that he believed that this was the ICO's view. He asked to be directed to guidelines that state conclusively that email addresses constitute personal data, why it feels able to disclose some email addresses on its website and whether consent had been provided; and
3. Section 31(1)(a) - He explained that no other University had used this exemption, said that he had read the Commissioner's guidance and believed that the exemption was irrelevant.
7. On 9 July 2010 the public authority contacted the complainant. It explained that the internal review was underway and that the reviewers were actively considering the application of sections 36(2)(c) and 40(2). It asked for the following to enable it to carry out its review: *'For what purpose or purposes are you requesting this information and what legitimate interest do you believe that this would serve'*.
8. On 13 July 2010 the complainant replied and said:

*'I am willing to set aside the principle that FOI requests be treated as applicant and purpose blind. The major concern outlined in your initial response was about e-mail traffic so I will give a detailed explanation on this topic. I acknowledge that every FOI response sets something of a precedent and accept that whilst my stated purposes might prove acceptable another applicant could come along requesting the same information but intending to use it in a way that was not acceptable. For the record I have not requested names and phone numbers and have no intention of phoning anyone.'*

*I requested the list of staff e-mail addresses in order to inform staff about my website AcademicFOI.Com. This site investigates higher education matters through FOI requests and publishes the results. University staff are invited to suggest in confidence topics worthy of investigation. I attach an outline of the wider aims of the project.*

*My understanding is that sending e-mails to corporate e-mail addresses such as .ac.uk ones is lawful so long as a postal address and simple method of opting out of future mailings are provided. I have no intention of selling, passing on or publishing any lists of university staff e-mail addresses.*

*I would envisage contacting university staff once or twice per year. I am combining the different university e-mail lists together and sorting them in alphabetical order. I will then send to blocks of e-mail addresses hourly on a pre scheduled delivery timetable over a four week period. For a university with 1,000 staff there would be typically 6 e-mails per hour and therefore no danger of overloading the university e-mail server. From my own point of view the e-mails will be spread over a four week period so as not to overload my own website server located in Germany.*

*I have so far contacted 26,500 university staff across 30 universities including your own. Typically 25% look up the website, 15% add the website into their internet favourites and 0.5% ask to be removed from future mailings.*

*In summary I do not believe that the use I intend to make of the list will cause the sort of disruption outlined in the initial response and decision notice referred to. Your university already publishes 1,100 staff e-mail addresses on your website. There are a total of 226,000 staff e-mail addresses published across the websites of the 148 HE institutions in the UK. I do not believe that the release of some extra ones to me will change the existing patterns of e-mail traffic in any material way.*

*My interpretation is that for a Section 31 exemption to be valid a potential denial of service attack would need to be directed at an organisation routinely involved in the prevention or detection of crime.'*

9. On 10 August 2010 the public authority communicated the results of its internal review. It explained that it had considered all the arguments raised and decided to uphold its position. It provided further detail about the application of the exemptions:
  1. Section 36(2)(c) - it explained that the decision was taken by the appropriate individual and the decision was taken on the basis of relevant evidence and its past experiences. It explained that it believed that the disclosure of the whole list would prejudice the University's ability to offer an effective public service or meet its wider objectives and purposes, to provide education and conduct research. He also considered the public interest test and concluded that it favoured maintaining the exemption. It explained that it was happy that many of the principles mentioned in EA/2006/0027 were relevant in this case – particularly paragraphs 60, 65, 66, 88 and 89. It said that the Vice Chancellor had also considered the case again in light of the complainant's arguments above. It explained



that this did not change the verdict as it believed that the amount of email traffic would be greater than it would receive otherwise;

2. Section 40(2) – it has 5291 email addresses. This number includes staff who work for it on a temporary basis. The University has asked the ICO twice about this matter and it was told that this information could amount to personal data and it believed it does. Its data protection policy explains that the information will only be given out where reasonable and necessary for the performance of an individual's roles, unless they provide their consent. It provided real detail about why it did not believe that the disclosure of the information would accord with any of the conditions in Schedule 2 of the Act and therefore would contravene the first data protection principle and engage the exemption. It explained that it was mindful that the email addresses of those who are appropriately senior or in public facing roles would not be caught by section 40(2). However, it believed that it would exceed the cost limit to identify those individuals<sup>3</sup>; and
  3. Section 31(1)(a) – it explained that it continued to believe that the release of information would create an extra risk of a denial of service attack against it, which was an offence under the Computer Misuse Act 1990 and that it would prejudice the prevention or detection of crime. It quoted the ICO guidance which provided EA/2006/0060 as an example. It said it was content that the exemption continued to be engaged.
10. It should be noted that at this stage, the public authority failed to outline in detail the public interest considerations that it took into account in disclosing the information or expressly those that it took into account in maintaining the exemption. It was therefore not clear about how this was considered by the time of internal review.

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<sup>3</sup> For the avoidance of doubt, the Commissioner does not believe that the time spent considering the operation of any exemption can be correctly taken into account when considering the appropriate limit. This accords with the Information Tribunal Decision in: [http://www.informationtribunal.gov.uk/DBFiles/Decision/i359/S\\_Yorkshire\\_Police\\_v\\_IC\\_\(EA-2009-0029\)\\_Decision\\_14-12-09\\_\(w\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i359/S_Yorkshire_Police_v_IC_(EA-2009-0029)_Decision_14-12-09_(w).pdf)

## **The Investigation**

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### **Scope of the case**

11. On 15 August 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - The University already published 1,100 email addresses on its website;
  - That according to his understanding these email addresses would be sufficient should someone nefarious wish to target the University with a denial of service attack;
  - Therefore, the provision of all the email addresses would not increase the risk of such an attack; and
  - He was not convinced by the arguments about section 31(1)(a) and explained that he did not see email addresses as being the equivalent to providing information to potential burglars about empty houses (a reference to EA/2006/0060).
12. The Commissioner has been asked by the complainant to consider a number of requests for the email addresses of all staff. The complainant has explained that he wanted the Commissioner to decide whether he could receive the full list in every case. He stated that the only restricted option he would accept would be a full list with redactions for staff who have specifically requested anonymity on grounds of personal safety.

### **Chronology**

13. On 3 September 2010 the Commissioner wrote to the complainant to explain that he had received an eligible complaint.
14. He also wrote to the public authority on the same day to inform it of the complaint and to make detailed enquiries about its application of the section 36(2)(c) exemption.
15. On 8 October 2010 the public authority provided the Commissioner with an electronic copy of its response. The Commissioner received a hard copy with its attachments on 11 October 2010 and acknowledged safe receipt.

16. On 21 October 2010 the Commissioner telephoned the public authority to seek further information and received that information on the same day.

## **Findings of fact**

17. The person designated as being the Qualified Person for this public authority is the Vice Chancellor – Professor Phillip Jones. This corresponds with an Order that was signed by Mr Derek Twigg on 21 December 2004. The relevant content of this Order has been reiterated by the new government at the following link<sup>4</sup>.
18. The Commissioner has checked the format of the withheld information and can confirm that there are 5291 addresses that are mostly in the format [j.bloggs@shu.ac.uk](mailto:j.bloggs@shu.ac.uk) (unless there two people with the same surname and same initial – in which case they choose their own designation that includes their surname).

## **Analysis**

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### **Exemptions**

#### *Section 36(2)(c) – prejudice to the effective conduct of public affairs*

19. The Commissioner has chosen to consider section 36(2)(c) first because should it be appropriately applied then it would cover all of the withheld information. Only one exemption needs to be applied correctly to withhold the information under the Act.
20. Section 36(2)(c) provides that information is exempt if in the reasonable opinion of the qualified person, disclosure of the information would, or would be likely to, prejudice the effective conduct of public affairs. It is a qualified exemption, so subject to a public interest test. The Commissioner will first consider whether the exemption is engaged and, if so, will move on to consider where the balance of public interest lies.

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<sup>4</sup> <http://www.bis.gov.uk/assets/biscore/corporate/docs/foi/foi-authorisation-of-a-qualified-person.pdf>



*Is the exemption engaged?*

21. In section 36(2)(c) cases, the Commissioner's role, when considering if the exemption is engaged, is to decide whether the qualified person's opinion that the disclosure would, or would be likely to, prejudice the conduct of public affairs is a reasonable one.
22. In order to do this it is important to understand what the Qualified Person meant when he gave his opinion. There are two possible limbs of the exemption on which the reasonable opinion could have been sought:
  - where disclosure "would prejudice" the effective conduct of public affairs; and
  - where disclosure "would be likely to prejudice" the effective conduct of public affairs.
23. The public authority explained that the question that it posed to its Qualified Person was phrased slightly differently than the second limb, but that it believed that what he was asked was analogous. It asked its Qualified Person:

*"whether it was likely that the disclosure...would result in prejudice to the effective conduct of public affairs."*
24. The Commissioner's view is that the slight difference in framing the question makes no material difference in respect to the point that the threshold that was considered by the Qualified Person was that disclosure 'would be likely to prejudice the effective conduct of public affairs'. This means that the Qualified Person's decision was that he was of the view that the chance of the prejudice being suffered was more than a hypothetical possibility and that there was a real and significant risk<sup>5</sup>. The Commissioner will judge whether the opinion was a reasonable one on the basis of this threshold.
25. This contrasts to the first limb which would have required the prejudice to be more probable than not.
26. In order to establish that the opinion of the Qualified Person was reasonable and that the exemption has been engaged the Commissioner must:

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<sup>5</sup> This threshold was confirmed in paragraph 15 of the Information Tribunal decision in *John Connor Press Associates Limited v The Information Commissioner* [EA/2005/0005]: <http://www.informationtribunal.gov.uk/DBFiles/Decision/i89/John%20Connor.pdf>

- Ascertain who the qualified person is;
  - Establish that an opinion was given;
  - Ascertain when the opinion was given; and
  - Consider whether the opinion was objectively reasonable and reasonably arrived at.
27. The first three criteria can be dealt with swiftly. As noted above, the Qualified Person is the Vice Chancellor. The Commissioner has established that the Vice Chancellor has provided two opinions in this case and their dates were as follows:
1. 20 May 2010 – this opinion was given before the refusal notice was issued; and
  2. 19 July 2010 – this opinion was given in light of the request for internal review and considered whether the Vice Chancellor wished to revise his view in light of the complainant's arguments.
28. The last criterion noted in paragraph 26 requires detailed analysis. In the case of *Guardian & Brooke v Information Commissioner & the BBC* [EA/2006/0011 and 0013] ('Guardian & Brooke'), the Information Tribunal stated that "in order to satisfy the subsection the opinion must be both reasonable in substance and reasonably arrived at." (paragraph 64). The Commissioner will consider each of these requirements in reverse order:
- Reasonably arrived at*
29. In determining whether an opinion had been reasonably arrived at, the Tribunal in *Guardian & Brooke* suggested that the qualified person should only take into account relevant matters and that the process of reaching a reasonable opinion should be supported by evidence, although it also accepted that materials which may assist in the making of a judgement will vary from case to case and that conclusions about the future are necessarily hypothetical.
30. When considering whether the opinion was reasonably arrived at, the Commissioner has received a copy of the first opinion and an email from the Vice Chancellor explaining what was taken into account during the internal review process. He has also been provided with a large quantity of evidence that relates to what was considered when the opinion was provided by the decision maker. The Commissioner's view is that the evidence considered when coming to an opinion is an

important factor in considering whether that opinion is reasonably arrived at and has therefore noted what was considered in respect to each opinion below:

1. The first opinion was provided when the decision maker was in possession of the following information:
  - i. A copy of the request for information and an explanation about its background;
  - ii. A submission from the governance officer which explained the nature of the exemption, when the ICO guidance explains that section 36(2)(c) could be considered, the level of prejudice required and public interest considerations;
  - iii. A summary of EA/2006/0027 to allow the decision maker to consider its similarities and differences to the current case;
  - iv. An explanation about the availability of the information that is embraced by the request;
  - v. An explanation of the perceived difficulties the release of the information would have, including relevant examples in the past;
  - vi. An explanation of the denial-of-service attack and why it may be more likely to occur if this information was disclosed;
  - vii. An explanation from the person in charge of IT about the likelihood of problems being generated from the disclosure;
  - viii. A detailed annex containing the public interest factors that the information officer believed favoured both the maintenance of the exemption and the disclosure of the information; and
  - ix. An explanation of other exemptions that are also being considered.
2. The second opinion was provided when the decision maker was in possession of the following information:
  - i. The same information outlined in part 1; and
  - ii. The complainant's request for internal review and his further submissions.



31. From these documents, the Commissioner is satisfied that the qualified person appears to have taken into account relevant considerations and does not appear to have been influenced by irrelevant ones. He has determined that the Qualified Person's opinion was reasonably arrived at.

*Reasonable in substance*

32. In relation to the issue of whether the opinion was reasonable in substance, the Tribunal indicated in *Guardian & Brooke* that "the opinion must be objectively reasonable" (paragraph 60). The Commissioner has asked the public authority to provide a detailed explanation of the reasons why it believes that the disclosure of the withheld information would be likely to cause prejudice to the effective conduct of public affairs. The reasons the Commissioner considers are relevant are:

1. The University explained that it was worried about receiving Spam that it believed would disrupt it from carrying out its public duty. It explained that it had 5291 email addresses and even if only two emails were sent a year to each and 30 seconds were spent reading them – it would still amount to 881 hours of working time that would be used up. It explained that depending on the number of emails that it received that there could be a potentially unlimited drain on its resources;
2. It explained that the request itself was unlikely to be a one off as the information requested would become less useful with time. The Commissioner does not accept that this argument should have any weight. This is because future requests should be considered on their own merits;
4. It noted that the disclosure of the list under the Act would not be just to the complainant but to the whole public at large. Therefore, irrespective of the complainant's intentions it must exhibit caution about the release of the information to the whole public;
5. It explained that it had evidence that the complainant had used information obtained through FOIA to conduct a targeted campaign against another University. The public authority expressed concern that the disclosure of the whole list would enable its functions to be disrupted from a similar campaign;
6. It explained that email is crucial and underpins the public authority's core business. It said that it is used by all administrative, managerial and academic staff, is the key to contacting overseas

teaching partners and also to contact workplaces where students are on placement. IT supports the University's teaching and research and HR, finance and student information systems are run by its IT staff. It explained that disruption to its email service at key times would be highly difficult to manage due to the nature of its role – for example during admissions (particularly in clearing), online graduation or extension deadlines. In conclusion, all its key services are dependent on email;

7. The public authority has calibrated its website so that emails that are part of its core business are directed to the correct place enabling enquiries to be dealt with by those individuals without duplication and in the most efficient way. The public authority explained that its staff had expressed concern about the number of emails that they were receiving and the University has introduced a policy to address these concerns. It explained that it was worried that further unnecessary emails would cause its staff stress and it believed that this would prejudice the effective conduct of public affairs;

8. It explained in addition its staff have varying knowledge of IT and awareness of potential phishing attempts or email scams and it felt it prudent to protect its staff. In addition, it believed that the receipt of unexpected emails would lead to members of its staff making queries to other staff because they were concerned that their personal data was not receiving appropriate protection. This happened before when there was a spam incident resulting from its inadvertent previous disclosure of part of its directory in 2007. Numerous queries were raised with the IT staff, finance, human resources or the secretariat and all these queries required answers which will take the staff away from their core duties. While the Commissioner notes that there is a distinction between unplanned and planned disclosures, the Commissioner is still content that this is a relevant consideration;

9. It also explained that the University may be burdened with legal and financial liabilities which result from successful phishing attacks. The University explained that it has had four complaints about this matter in the past and that similar claims may have more success if it could be proved that the likelihood of phishing attacks was connected to a disclosure it has made; and

10. Finally, it provided detailed evidence of an attack that it received after the inadvertent disclosure of part of the staff directory in 2008. The Commissioner notes that there were two attacks and he has received details about how they operated and their effect on the University. While the Commissioner notes that there is a distinction

between unplanned and planned disclosure, the Commissioner is still content that this is a relevant consideration.

33. The Commissioner has also carefully considered the complainant's counterarguments. The Commissioner has noted that the University has published 1100 of its email addresses and that the complainant has argued that this in itself has not adversely impacted on the public authority. He also notes the complainant's view that there is therefore no evidence to suggest that publishing a full list would increase the risk to public authority of for example a denial of service attack. However he accepts that there is a difference in the current availability of the 1100 email addresses (which the public authority accepts are necessary for the performance of an individual's role or duties) and the disclosure of a full list containing 5291 email addresses. He has also noted the complainant's arguments that he would use the list responsibly. It is important to note that disclosure of information under the Act should be regarded as disclosure to the world at large. This is in line with the Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) (following *Hogan and Oxford City Council v The Information Commissioner* (EA/2005/0026 and EA/2005/0030)) confirmed that, "*Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions*" (paragraph 52).<sup>6</sup> The motivations of the complainant are therefore irrelevant. However, the argument that equivalent public authorities have not withheld the same information that was requested has been evidenced by the complainant. While it must be noted that the application of an exemption is discretionary, the Commissioner must consider whether the prejudice has been overstated by this public authority given the alternative approach by the others. He also considered the complainant's submissions about denial of service attacks.
34. The complainant has also argued that the amount of email traffic would not be not affected in a material way through the disclosure of the full list of email addresses. However the public authority has evidenced the spikes in traffic that resulted from the disclosure of part of the directory in the past. In view of this, the Commissioner is not satisfied that the release of the list to the public would not affect the traffic that the public authority receives.
35. The complainant also argued that sophisticated IT systems ought to be able to counteract any possible prejudice that the public authority would experience through the disclosure of the list. The Commissioner

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<sup>6</sup>[http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews\\_HBrooke\\_v\\_infocomm.pdf](http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews_HBrooke_v_infocomm.pdf).



accepts that there is some merit to this argument. However the Commissioner has noted what happened following the disclosure of part of the directory in the past and is willing to accept that a method of attack can vary and there is always likely to be a time delay between where the problem is noted and counteracted. This delay can mean that the attack has already done considerable damage and therefore the existence of IT security does not mitigate the prejudice to a significant extent.

36. The Commissioner has carefully considered the arguments presented by both parties in this case and is satisfied that the Qualified Person's opinion was objectively reasonable in substance. This is because he is satisfied that in the particular circumstances of this case it was reasonable for the Qualified Person to conclude that the disclosure of the withheld information to the public would be likely to cause an adverse effect to the public authority's ability to carry out its core functions. He considers that in this case the evidence supported the opinion of the Qualified Person because the public authority's was able to evidence that the disclosure of similar information has had an adverse effect in the past. The Commissioner also accepts that it should be entitled to organise itself so that the correct members of staff receive the correct emails to prevent both duplication and wastage of its limited resources.
37. The Commissioner has concluded that the opinion of the qualified person appears to be both reasonable in substance and reasonably arrived at, and he therefore accepts that the exemption found in section 36(2)(c) is engaged.

*The Public Interest Test*

38. Section 36(2)(c) is a qualified exemption. That is, once the exemption is engaged, the release of the information is subject to the public interest test. The test involves balancing factors for and against disclosure to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
39. The Commissioner will commence his analysis by considering those factors that favour disclosure. He will then consider those that favour the maintenance of the exemption, before concluding where he considers the balance lies.

*Public interest arguments in favour of disclosing the requested information*

40. The public authority has explained to the Commissioner that its starting point is always disclosure. It also listed the public interest factors that it believed to favour disclosure:
  - The public interest in ensuring transparency in the activities of public authorities;
  - The public interest in ensuring that members of the public are able to contact appropriate staff within the public authority; and
  - The public interest in staff being able to access certain external services for their work.
41. It explained that it understood that the public interest in ensuring the transparency of the public authority's work is always strong as it is the fundamental objective of the Act. It also understood that it should be as accountable as possible.
42. However, it explained that these arguments should be given little weight in this case, as it believed that the disclosure of the information would not provide greater transparency of the University and the list on its own does not tell the requestor anything about its activities.
43. The Commissioner has considered the accountability arguments against the information that has been requested. He finds that it is appropriate to consider the Information Tribunal's view about accountability in *Cabinet Office v Lamb and the Information Commissioner* [EA/2008/0024 & 0029] which explained '*Disclosure under FOIA should be regarded as a means of promoting accountability in its own right and a way of supporting the other mechanisms of scrutiny, for example, providing a flow of information which a free press could use*'. This indicates that even though the email addresses on their own add little to the public understanding of how the public authority operates, their disclosure may facilitate or support scrutiny by allowing the applicant to invite the public authority's staff to raise issues of concern. He therefore finds that the arguments about accountability should be given some weight in this case. However the weight of these arguments is mitigated by further evidence that has been provided. This evidence shows that there is real awareness of FOI within the University, that there are set channels where members of staff can request management information and that the public authority has already provided a facility to allow staff to raise issues anonymously.

44. The Commissioner also accepts that there is a public interest in knowing the number of staff and who are employed by public funds. In addition, there is a public interest in making it possible to contact relevant individuals where their expertise would merit their contact. However, in this case it must be noted that the number of staff is known (5291) and the list by itself provides no information that would enable specific individuals to be selected.
45. The complainant has also argued that the public authority's staff are likely to be interested in the services that he offers. He supported this argument by the interest shown in his service when he has approached other public authorities. He explained that the marketing of the service provided a real benefit to the staff. The Commissioner considers that some services will be useful to individual members of staff, however he must consider what the effect would be of disclosing this information to the whole public.

*Public interest arguments in favour of maintaining the exemption*

46. The public authority has provided detailed submissions about why it believes that the public interest favours the maintenance of the exemption. It is important to note that only factors that relate to the likely prejudice of the effective conduct of public affairs can be considered in this analysis.
47. The public authority has detailed the following public interest arguments for the Commissioner to consider:
- There is a public interest in ensuring that public authorities are allowed to provide the services that they offer without undue disruption and hindrance. External email enquiries which are not routed through agreed channels cause disruption and waste staff time;
  - The undermining of communication channels is linked to the nature of the information requested. The public authority explained that most of its public facing staff work in defined specific areas. The wording of the request does not differentiate between areas – so any possible communication will either be sent to all staff or randomly without reference to their area of work;
  - There is a public interest in ensuring that enquiries are dealt with in a consistent and prompt manner and are therefore directed through agreed and publicised service channels;
  - The public authority has an interest in protecting its reputation by delivering consistent messages regarding procurement. It does so by



routing enquiries through agreed channels and the disclosure of the list may lead to those channels being subverted;

- Any release of the list under the Act would be to the public. The public authority has evidenced to the Commissioner that this would lead to many more unsolicited marketing messages, more spam and disruption to its staff;
  - It is in the public interest for the public authority to protect its staff from being bombarded or targeted by external contacts (particularly the most junior staff) and from them being sent irrelevant and unwanted emails as this can cause disruption to staff, confusion and distress;
  - It is in the public interest for the public authority to protect its staff from spam emails which may be fraudulent in nature, such as phishing emails;
  - The public authority has a legitimate interest in ensuring that all University communications are genuine and the reputation of the public authority is not damaged by fraudulent mailings as occurred in the 2008 case. The reputation may be damaged because members of staff would have less faith in its protection of their accounts;
  - The public authority has a duty of care to its staff to take reasonable steps to prevent staff being misled by emails purporting to come from a University source which may cause damage or distress to staff;
  - It is unlikely that the release of the list would improve transparency and accountability to any real extent and it would not bring to light information affecting public health and safety; and
  - The public authority believes that the information would make a denial of service attack easier and there are crucial parts of the year where this could truly undermine its core purposes.
47. When making a judgment about the weight of the public authority's public interest arguments, the Commissioner considers that he is correct to take the severity, extent and frequency of prejudice or inhibition to effective conduct of public affairs into account.
48. The Commissioner is satisfied that there are two main themes of the public interest arguments that favour the maintenance of the exemption:

1. That the provision of the list to the public would undermine the channels of communication and lead to a consistent loss of time from the public authority's core functions; and
  2. That the provision of the list to the public would leave the public authority and its staff more open to phishing attacks and the resulting problems that may be suffered.
49. The Commissioner is satisfied that the first theme of arguments would amount to a fairly severe prejudice, whose extent and frequency would be potentially unlimited. He is therefore satisfied that these public interest factors should be given real weight in this case and they favour the maintenance of the exemption.
50. The Commissioner is also satisfied that the second theme of arguments relate to a severe prejudice, whose extent and frequency would be potentially unlimited. As noted above, he has considered the complainant's counterarguments that IT security systems should be able to mitigate this prejudice. However, he notes that IT security systems are not perfect and the nature of attacks is always evolving. The Commissioner considers that the presence of IT security systems cannot be taken into account, because future attacks may be able to cause damage before the IT security systems can intervene. He is therefore satisfied that this prejudice would be likely from the release of this information to the public and that these public interest factors should be given real weight in this case and favour the maintenance of the exemption.
51. The Commissioner has considered the competing arguments about whether the likelihood of denial of service attacks would or would not be increased. The Commissioner has considered the arguments of both sides and has concluded that disclosure of the list would not pose a severe risk of increase to the potency of denial of service attacks and has decided to give little weight to the public authority's public interest arguments about this matter.

*Balance of the public interest arguments*

52. When considering the balance of the public interest arguments, the Commissioner is mindful that the public interest test as set out in the Act relates to what is in the best interests of the public as a whole, as opposed to interested individuals or groups.
53. In this case the Commissioner considers that there is some weight to the public interest arguments on both sides. The Commissioner appreciates that the arguments in favour of additional accountability

and transparency have some weight in this case. He accepts that it is important for a public authority to be as transparent as possible where there is not a significant adverse effect. However, in the circumstances of this case he considers that the weight of public interest factors maintaining the exemption are greater than those that favour disclosure. He is satisfied that the disclosure of the information to the public would be highly likely to prejudice the public authority from its core functions – both because it would undermine the channels of communications and leave the University open to spam emails and their consequences. Given the negative impact this would have on the public authority, the Commissioner has concluded that the public interest favours maintaining the section 36 exemption.

54. In light of the above, the Commissioner finds that the public interest lies in maintaining the exemption, and therefore withholding the disputed information outweighs the public interest in disclosure. The Commissioner is satisfied that the disputed information was correctly withheld by the public authority and upholds the application of section 36(2)(c).
55. As the Commissioner has found that section 36(2)(c) has been appropriately applied, he has not gone on to consider the application of sections 31(1)(a) or 40(2) .

### **Procedural Requirements**

56. Section 17(3) requires that a public authority explains why the public interest factors that favour the maintenance of a qualified exemption outweighs the public interest in disclosure of the information. As noted in paragraph 10 above, the public authority failed to do this by the time of its internal review. It therefore breached section 17(3).

### **The Decision**

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57. The Commissioner's decision is that the public authority dealt with the request substantively in accordance with the requirements of the Act. This is because it applied section 36(2)(c) appropriately to all of the withheld information.
58. However, the Commissioner has also decided that there was a procedural breach of section 17(3) because the public authority failed to explain in either its refusal notice or internal review why it believed that the public interest favoured the maintenance of the exemptions that it applied.



## **Steps Required**

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59. The Commissioner requires no steps to be taken.

## Right of Appeal

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60. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 14<sup>th</sup> day of February 2011**

**Signed .....**

**Pamela Clements  
Group Manager, Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **Legal Annex**

### **The Freedom of Information Act 2000**

#### **Section 1 - General right of access to information held by public authorities**

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

...

#### **Section 17 - Refusal of request**

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and



(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

## **Section 31(1) – Law enforcement**

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”

...

## **Section 36 - Prejudice to the effective conduct of public affairs**

(1) This section applies to-

- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
  - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or

- (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
- (iii) the work of the executive committee of the National Assembly for Wales,

(b) would, or would be likely to, inhibit-

- (i) the free and frank provision of advice, or
- (ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

...

## **Section 40 – Personal information**

“(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

(5) The duty to confirm or deny—



(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- "the data protection principles" means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- "data subject" has the same meaning as in section 1(1) of that Act;
- "personal data" has the same meaning as in section 1(1) of that Act."

## **Data Protection Act 1998**

### **Section 1 - Basic interpretative provisions**

(1) In this Act, unless the context otherwise requires—

- "data" means information which—

(a)

is being processed by means of equipment operating automatically in response to instructions given for that purpose,

(b)

is recorded with the intention that it should be processed by means of such equipment,

(c)

is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or

(d)

does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

- "data controller" means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- "data processor", in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- "data subject" means an individual who is the subject of personal data;
- "personal data" means data which relate to a living individual who can be identified—

(a)

from those data, or

(b)

from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

- "processing", in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—

(a)

organisation, adaptation or alteration of the information or data,

(b)

retrieval, consultation or use of the information or data,

(c)

disclosure of the information or data by transmission, dissemination or otherwise making available, or

(d)

alignment, combination, blocking, erasure or destruction of the information or data;

- "relevant filing system" means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

(2) In this Act, unless the context otherwise requires—

(a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and

(b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.

(3) In determining for the purposes of this Act whether any information is recorded with the intention—

(a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.